

IC 8-4-2

Chapter 2. Amending Articles of Incorporation in Railroad Companies

IC 8-4-2-1

Special meeting of shareholders

Sec. 1. Whenever the board of directors of any railroad company (including any union railway corporation) organized on or after March 2, 1933, under the laws of this state or of this state and any other state or states desires to amend its charter, articles of association, articles of incorporation, or articles of consolidation, in any one (1) of the following respects, namely:

- (a) to increase or decrease its capital stock;
- (b) to change the number of shares of its capital stock;
- (c) to increase or decrease the par value of the shares of its capital stock;
- (d) to provide for shares with par value, or shares without par value, or both, with such designations, relative rights, preferences, qualifications, limitations, restrictions, voting rights, values and interests of the shares of each class as said board may specify;
- (e) to provide the consideration for which the company may issue and sell its shares without par value, or to authorize the board of directors to fix such consideration from time to time;
- (f) to change the shares of any class into the same or a different number of shares of any other class or classes, including a change of shares with par value into shares without par value or a change of shares without par value into shares with par value;
- (g) to classify or reclassify the shares of its capital stock;
- (h) to extend its corporate existence, including a term which shall extend for perpetuity;
- (i) in the case of any such company which is no longer engaged in the conduct of the railroad business or in transportation by railroad, but which is engaged in leasing the railroad owned by it to a lessee which maintains and operates the same, to provide for:
 - (1) elimination of its powers further to construct, maintain or operate a railroad, engage in the conduct of the railroad business, and engage in transportation by railroad; and
 - (2) continuation of any charter powers it may, have or purport to have on March 9, 1939:
 - (A) first, to own a railroad for the purpose of leasing the same for a term of any duration to a lessee who or which is empowered further to construct, maintain or operate a railroad, engage in the conduct of the railroad business, or engage in transportation by railroad; and
 - (B) second, to acquire, own, lease, manage, operate, mortgage, and sell other real and personal property, and to operate and maintain a public stockyard, as the same is defined in 7 U.S.C. 103;

provided that no lease to which such company is a party on March 9, 1939, shall be invalid in whole or in part because of the term of its duration and that no amendment to such charter, articles of association, articles of incorporation, or articles of consolidation can be made which will impair the validity of any such lease; or

(j) to make any other amendment, without limitation, so long as the charter, articles of association, articles of incorporation, or articles of consolidation of such company, as amended, have been authorized by IC 8-4-1 as an original charter, articles of association, articles of incorporation, or articles of consolidation;

said board may call a special meeting of the stockholders of said company for the purpose of submitting to a vote of such stockholders the question of the approval of such amendment or may direct that such question be submitted to the stockholders at a regular annual meeting.

(Formerly: Acts 1933, c.101, s.1; Acts 1939, c.65, s.1.) As amended by P.L.62-1984, SEC.44; P.L.17-1985, SEC.6.

IC 8-4-2-2

Special annual meeting of shareholders; publication or delivery of notice

Sec. 2. The special or annual meeting of the stockholders at which the question of the approval of such amendment is to be submitted shall be called by delivering personally, or depositing in the post-office stamped and addressed to each stockholder at such address as appears upon the records of the company, at least ten (10) days before the time fixed for such meeting, a notice, stating the time, place and object of such meeting.

(Formerly: Acts 1933, c.101, s.2; Acts 1939, c.65, s.2.)

IC 8-4-2-3

Special annual meeting of stockholders; voting

Sec. 3. At any such meeting stockholders may vote in person or by proxy, each stockholder being entitled to one (1) vote for each share of stock held by him, and votes representing at least a majority (or such greater proportion as the articles of association or consolidation may require) of all the outstanding stock of each class shall be necessary for the approval of any such change.

(Formerly: Acts 1933, c.101, s.3.)

IC 8-4-2-4

Special annual meeting of stockholders; voting; certificate of amendment; filing

Sec. 4. If at such special or annual meeting of the stockholders, said amendments, or any of them, be submitted to a vote, and if it shall appear that votes representing a majority (or such greater proportion as said articles may require) of all the outstanding stock of each class of said company are cast in favor of the approval of

said amendments or any of them, as submitted by the directors or as altered by the stockholders' meeting, a certificate setting forth such amendments as adopted and the approval thereof, verified by the affidavit of the president or vice-president and under the corporate seal of said company shall be filed in the office of the secretary of state, and thereupon the amendment or amendments so approved at such meeting of the stockholders shall be, and are hereby declared, accomplished, and the articles of association or consolidation of said company shall be deemed to be amended in accordance with said vote of the stockholders.

(Formerly: Acts 1933, c.101, s.4; Acts 1939, c.65, s.3.)

IC 8-4-2-5

Defending shareholders; payment; resubmission of proposed amendment

Sec. 5. (a) If any shareholder of any such corporation who did not vote in favor of such amendment at the meeting at which the amendment was adopted by the shareholders of such corporation, shall, at any time within thirty (30) days after such adoption of the amendment by such shareholders, object thereto in writing and demand payment of the value of his shares, the corporation shall, in the event that the amendment shall be made effective, and in the event that the amendment is of such a nature that its adoption without his consent and without giving him a remedy would unconstitutionally deprive him of rights, pay to such shareholder, upon surrender of his certificates therefor, the value of such shares on March 9, 1939, which shall be the date the certificate required in section 4 of this chapter, shall be filed in the office of the secretary of state. If before April 9, 1939, the value of such shares is agreed upon between the shareholder and the corporation, as the case may be, payment therefor shall be made before June 8, 1939. If, before April 9, 1939, the corporation and the shareholder do not so agree, either such corporation or the shareholder may, before June 8, 1939, petition the circuit or superior court of the county in which the principal office of the corporation is located, to appraise the value of such shares; and payment of the appraised value thereof shall be made within sixty (60) days after the entry of the judgment or order finding such appraised value. The practice, procedure, and judgment in the circuit or superior court upon such petition shall be the same, so far as practicable, as that under the eminent domain statutes in this state.

(b) Upon March 9, 1939, any shareholder who has made such objection and demand shall cease to be a shareholder and shall have no rights with respect to such shares except the right to receive payment therefor. Every shareholder who did not vote in favor of such amendment and who does not object in writing and demand payment of the value of his shares at the time and in the manner aforesaid, shall be conclusively presumed to have assented to such amendment, if he does not within six (6) months thereafter, in a court of competent jurisdiction, question such action.

(c) After April 8, 1939, the board of directors of the railroad company may, in its discretion, resubmit the amendment, or any other amendment, to a meeting of the stockholders of said company, in the same manner as is provided in sections 1 and 2 of this chapter, before filing in the office of the secretary of state the certificate provided in section 4 of this chapter, and shall file such certificate only upon receiving again the affirmative vote required in section 4 of this chapter.

(Formerly: Acts 1933, c.101, s.4a; Acts 1939, c.65, s.4.) As amended by P.L.62-1984, SEC.45.

IC 8-4-2-6

Stock without par value; payment in full

Sec. 6. Any such company authorized by its articles of association or consolidation to have shares of capital stock without par value, may from time to time, issue and sell or otherwise dispose of any such shares for such consideration as may be provided for in said articles, or as may be fixed by the board of directors, pursuant to authority conferred by said articles. When the consideration for which any such shares was authorized to be issued shall have been received by the company, such share shall be deemed to be fully paid and nonassessable.

(Formerly: Acts 1933, c.101, s.5.)